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General publications

YOUR PRODUCTIVITY BEING UNDERMINED?



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Does your hiring policy guarantee
the best results?

Or can someone at a lower level
exercise his private prejudices
and recruit second-bests?

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Government
Publications

Fair Employment Practices Branch
CANADA DEPARTMENT OF LABOUR
OTTAWA



International Year for Human Rights
L'année internationale des droits de l'homme
Canada 1968

ASSESSMENT

The following questions may help to assess your employment policy. To the extent that the answers are "No", the employment policy is in need of review.

	YES	No
1. Have you a clear-cut policy of fair employment in hiring as well as in promotions?	_____	_____
2. Do you refuse to use discriminatory specifications in employment advertising or job orders with employment agencies?	_____	_____
3. Has your fair employment policy been put into writing?	_____	_____
4. Is your fair employment policy included in your personnel orientation manual?	_____	_____
5. Do you explain your fair employment policy to job applicants?	_____	_____
6. Is on-the-job training open to all employees regardless of race, religion, colour or national origin?	_____	_____
7. Do you allow persons in minority groups to be employed in all sections of your business rather than restricting them to certain jobs or sections?	_____	_____
8. Have you made your fair employment policies clear to the unions that represent your employees?	_____	_____

Have You, as an Employer, a Fair Employment Policy?

Many business organizations have an employment policy that is formulated along only very general lines and does not deal specifically with the subject of discrimination in employment. A failure to include in directives to subordinates a clear-cut and positive policy statement and direction on discrimination in employment on account of creed, colour, race or national origin may have unforeseen consequences.

It may result in a mistaken or lukewarm application of the principle of non-discrimination in the hiring practices of the company by those responsible for the application of the policy.

It leaves the way open for any personnel supervisor who may have preferences or prejudices in hiring persons of certain races, creeds or colours to interpret and apply company policy accordingly. In these circumstances, higher company officers may be unaware that their employment policy, as applied, discriminates against Canadians and persons born outside Canada because of their creed, colour, race or national origin. Some personnel supervisors may translate their prejudices into company policy, believing that because the statement of employment policy does not cover discrimination, they have a free hand.

Whether or not employment policy directives deal with fair employment makes no difference to the person on the receiving end of discrimination—he is denied employment. He and others of his race, creed or colour soon learn that as far as they are concerned the employment door is closed. Discrimination brings moral and economic loss, not only to them but to the employers refusing them employment.

Apart from the issue of moral principle, a fair employment policy makes for good business all round. The best man for the job means better service, higher production, and their resulting benefits. Employment of a person in a minority group very frequently means income where it is most needed and will be most used—meaning more sales.

It should also be remembered that persons of all races, creeds and colours are consumers of the services and products of industry, and will be inclined to buy where fair employment practices prevail.

Management should have a positive employment policy against employment discrimination, containing the provision that merit shall be the governing principle in employee selection. To be successful, such a policy must be initiated and supported by top management.

The establishment of such a policy in positive terms, stating that merit will be the governing factor regardless of race, religion, colour or national origin, has caused some employers to worry over possible reaction from employees, trade unions, customers, and the public generally. These fears are usually unfounded. Employees rarely refuse to work with members of minority groups; trade unions have been leaders in the movement toward equality of opportunity in employment and customers appreciate good service no matter where it comes from. Indeed, one of the strongest arguments for the merit policy in employment is that it establishes management as being fair-minded in the eyes of the employee. It also serves as a guarantee that promotions and other benefits can flow from merit alone.

Any public reaction against employment of persons belonging to minority groups need not be feared when it is realized that the noisy and bigoted are themselves in the minority—nearly everyone wants to be fair. Certainly, no employer, trade union official or community leader would hesitate in choosing between trying to please a bigoted minority or a fair-minded majority of Canadians. Employers who have converted to “fair employment” testify that the policy does work to advantage. Where the employment door has opened, it has stayed open to the benefit of all concerned.

Economic Factors

Fair employment practices will:

- increase resources of skill and talent needed by any business to maintain its position, and move ahead;

- help to create for business a potential sales market within minority groups;
- help to diminish an appalling waste of human resources and thereby stimulate economically the community and particularly business;
- help all Canadians to play their full part as producers and consumers of goods;
- permit our citizens to follow employment of their personal qualifications and to climb as high as their competence warrants;
- improve inter-racial harmony in the community;
- set a standard for others to follow.

Legislation

With the knowledge that a policy of equality of opportunity in employment is essential to human dignity and the social well-being of the community, the Government of Canada in 1953 passed an Act that ensured this equality for all Canadian citizens seeking employment in undertakings falling within the federal sphere of legislative jurisdiction. This enactment made it a punishable offence to discriminate against any person in employment because of race, national origin, colour or religion.

The name of this statute is the Canada Fair Employment Practices Act. In passing this Act, Parliament was upholding the moral principle of universal human dignity and rights, which has been endorsed by Canada in its association with the endeavours of other organizations, such as the United Nations, the International Labour Organization, the International Confederation of Free Trade Unions and organized labour in Canada.

The Act applies to employment, employers and employees in operations defined as "Federal works, businesses or undertakings." They include:

- (1) Operations that are interprovincial or international in nature, such as: railway, ship, ferry, bus, trucking,

telegraph, telephone, wire news service, pipeline, tunnel, bridge and canal;

- (2) Operations relating to inland and maritime navigation and shipping, such as: the operation of ships and transportation by ship anywhere in Canada, long-shoring, stevedoring and other operations carried on for or in connection with navigation and shipping;
- (3) Aerodromes, aircraft and lines of air transportation;
- (4) Radio and television broadcasting stations;
- (5) Banks and banking;
- (6) Flour, feed, and seed cleaning mills, and feed warehouses, declared under the Canadian Wheat Board Act to be for the general advantage of Canada;
- (7) Grain elevators, declared under the Canada Grain Act to be for the general advantage of Canada;
- (8) Uranium mines and other works undertaken for the production, use and application of atomic energy, declared under the Atomic Energy Control Act to be for the general advantage of Canada;
- (9) Specific companies which are declared in their Acts of Incorporation or other Acts of Parliament to be for the general advantage of Canada or for the advantage of two or more provinces;
- (10) Certain Federal Crown corporations;
- (11) Operations outside the exclusive legislative authority of a province, and all other operations within Federal legislative authority.

Prohibited employment practices of particular importance, for the purpose of this pamphlet, to employers and their employment officers are specified in *Section 4* of the Canada Fair Employment Practices Act under the following subsections:

Subsection (1)

“No employer shall refuse to employ or to continue to employ, or otherwise discriminate against any person in regard to employment or any term or condition

of employment because of his race, national origin, colour or religion."

Subsection (2)

"No employer shall use, in the hiring or recruitment of persons for employment, any employment agency that discriminates against persons seeking employment because of their race, national origin, colour or religion."

Subsection (3)

"No trade union shall exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by any employer, because of that person's race, national origin, colour or religion."

Subsection (4)

"No employer or trade union shall discharge, expel or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act."

Subsection (5)

"No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry in connection with employment that expresses either directly or indirectly any limitation, specification or preference as to race, national origin, colour or religion unless the limitation, specification or preference is based upon a bona fide occupational qualification."

The principle underlying *Section 4(5)* of the Act is that a person's race, national origin, colour or religion cannot be considered to affect his performance of duties, and normally these factors should not be the subject of employment inquiries he is required or expected to answer.

Interpretation

If used as employment inquiries, the following questions would be contrary to the provisions of the Canada Fair Employment Practices Act. In some circumstances, however, the employer may be in a position to justify such questions as being based upon an essential occupational qualification:

(a) *Place of Birth (or Country of Birth).*

An applicant may, of course, be asked for "Date of Birth" and he may be told that, if employed, he will have to produce proof of age; but he should not be required, before being employed, to produce a birth certificate, which indicates the place as well as the time of birth.

(b) *Religion (or Church Affiliation or Denomination).*

(c) *Racial Origin (or Ancestry, or Descent).*

(d) *Nationality (or Citizenship).*

These questions may be considered discriminatory because, if answered, they would reveal the national origin of an applicant who has not become a Canadian citizen. If it is necessary that a position be filled by a Canadian citizen, the more specific question, "Are you a Canadian citizen?" may be asked.

(e) *To what clubs and organizations do you belong?*

This question may be brought in line with the requirements of the Act by adding the following: "Do not list clubs or organizations of a religious, racial or national character."

(f) *Name (or address, place of birth, religion, nationality or racial origin) of father (mother, brothers, sisters or other relatives).*

As answers to questions of this nature may indicate the race, national origin or religion of the applicant concerned, they would normally be considered discriminatory. The original name of an applicant who had changed his name, for example, would be the same

as his father's name. Usually, inquiries should not be made concerning changes of name.

(g) *Name and address of next of kin.*

For the reason given in (f), this question is undesirable. It may be suitably replaced by "Name and address of person to be notified in the event of an emergency".

(h) *White or coloured?*

Rarely found in Canadian application forms, this question is objectionable. In order to avoid charges of discrimination because of colour, applicants should not be required to submit photographs before they are hired. For the same reason, it is advisable to avoid inquiries concerning "Complexion".

(i) *Previous addresses.*

To avoid charges of discrimination because of national origin, the words "in Canada" should be added to this question.

A distinction may be drawn between pre-employment and post-employment inquiries. In some cases, a question which could be construed as a violation of the Act if asked of an applicant before he has been hired may be appropriately asked after hiring, as long as the information obtained is necessary for personnel purposes and is not used as a basis for discrimination in employment.

Example. Under most, if not all, circumstances, an applicant's religion should in no way affect his opportunity to obtain a job for which he is qualified, and there would be few, if any, valid reasons why a company should ask for such information before making a decision to hire or not to hire. After the applicant has been hired, however, a knowledge of his religion may be considered necessary for personnel purposes—to determine, for example, when leave-of-absence should be granted for the observance of religious holidays.

Because intent will determine violations of the Act, it is not possible to deal with all employment inquiries that might be construed as violations of the Act. For this reason, the above points of principal importance should not be

considered all-inclusive. It is hoped, however, that they will be helpful to employers who desire to revise their employment forms and policies to conform with the provisions of the Act.

Section 11 of the Act provides as follows:

“Nothing in this Act shall be construed to require a person to employ anyone or to do, or refrain from doing, any other thing contrary to any instruction, direction or regulation given or made by or on behalf of the Government of Canada in the interests of the safety or security of Canada or any state allied or associated with Canada.”

Insofar as employment inquiries are concerned, this means, among other things, that employers required for security reasons to use personnel history forms supplied by the Department of Defence Production or other agencies of the Federal Government may do so without fear of contravening the Act. It does not mean that, because they are working on classified government contracts, they may insert in employment application forms questions that are contrary to the Act.

It should be emphasized once again that in dealing with employment inquiries as they relate to the Act, it is not considered feasible to formulate hard and fast rules having general application. In the last analysis, it is the responsibility of each employer to determine what changes, if any, he should make in his employment forms and policies in order to conform with the requirements of the Act.

To those employers whose business does not fall within the federal jurisdiction as described on page 6, information on fair employment practices may be obtained from provincial authorities, since a number of provinces now have legislation governing fair employment practices. These provinces are British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and New Brunswick.

Canada's International Commitment in the Field of Fair Employment Practices

Canada has been a member state of the International Labour Organization since its inception in 1919. In the 1957-58 sessions of the International Labour Conference, Canada, along with several other nations, helped in the development of an international agreement, in the form of a Convention Concerning Discrimination in Respect of Employment and Occupation (Convention 111).

The Parliament of Canada had previously enacted, in 1953, the Canada Fair Employment Practices Act applicable to employment in industries in the federal jurisdiction, and, in subsequent years many of the Canadian provinces have acquired similar legislation for industries in their jurisdiction. In 1963 the Prime Minister of Canada consulted with the provinces and obtained confirmation that all, whether appropriate legislation had been enacted or not, followed policies that were in the spirit of the International Convention. In consequence Canada was able to ratify the Convention. This was done with the unanimous approval of the House of Commons on October 13, 1964, and Canada thereupon assumed the international obligation to implement its provisions.

More than 50 member countries of the International Labour Organization are parties to Convention 111. It is the purpose of this Convention to promote efforts throughout the world to remove discrimination in employment and occupation based on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity.

The Canada Department of Labour co-operates and maintains continuous liaison with Federal Government Departments, with provincial authorities and with other public and private agencies concerned with human rights and anti-discrimination legislation.

Regional officers of the Canada Department of Labour located at Vancouver, Winnipeg, Toronto, Montreal, Fredericton, Halifax and St. John's participate in the administration of the Canada Fair Employment Practices Act and carry out inquiries and investigations under the Act.



ROGER DUHAMEL, F.R.S.C.
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